

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND
MOFFATT & NICHOL**

THIS AGREEMENT shall be effective as of this 1st day of October, 2004, by and between the San Diego Association of Governments (hereinafter referred to as "SANDAG"), 401 B Street, Suite 800, San Diego, California, and Moffatt & Nichol, 320 Golden Shore, #300, Long Beach, California (hereinafter referred to as "Consultant") in view of the following facts:

RECITALS

The following recitals are a substantive part of this Agreement:

- A. SANDAG is in need of professional services for the following project: Sand Compatibility and Opportunistic Use Program (hereinafter referred to as the "Project").
- B. Consultant represents that it is duly licensed and qualified to provide such services and has the personnel and other resources necessary to accomplish the work within the required time.
- C. The purpose of this Agreement is to establish the terms and conditions for SANDAG to retain Consultant to provide the services described herein.

NOW, THEREFORE, it is agreed as follows:

I. SERVICES

Consultant shall provide SANDAG the services as described in the Scope of Work attached hereto as Exhibit A. Consultant's proposal and SANDAG's request for proposals concerning the Project are hereby incorporated by reference as part of the Scope of Work attached as Exhibit A.

II. AUTHORIZATION

Specific authorization to proceed (Notice to Proceed) with all or a portion of the work described in Exhibit A shall be granted in writing by SANDAG. Consultant shall not proceed with the work unless it is authorized. The Notice to Proceed shall set forth the date of commencement of work. Consultant shall commence work immediately upon receipt of the Notice to Proceed. This Agreement shall terminate on or before June 30, 2005, unless extended by amendment. The consultant is advised that any recommendation for contract award or notice of intent to contract is not binding on SANDAG until the Agreement is fully executed by all authorized parties.

III. PAYMENT

- A. SANDAG shall pay for services in accordance with the Payment Schedule attached hereto as Exhibit B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions of this Article.
- B. For services rendered pursuant to this Agreement, Consultant shall be paid a total not to exceed \$95,000. This amount shall be known as the "maximum amount of the Agreement."
- C. Said sum shall include all applicable costs such as salaries and wages, overhead, travel, materials and supplies, subcontract costs, and fixed fees or profit. Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, an increase in the maximum amount of this Agreement without SANDAG Executive Director approval.
- D. For the performance of services, Consultant will be paid a fixed fee for each deliverable based on cost per unit of work. SANDAG shall pay Consultant following receipt and approval of deliverables. After approval by SANDAG of deliverables, Consultant shall submit an invoice for payment based upon the portion of total work completed and approved as set forth in Exhibit B, Payment Schedule. SANDAG shall pay the invoices within thirty (30) days of receipt. SANDAG shall retain ten percent (10%) from the amount invoiced until satisfactory completion of all work contracted for as described in Exhibit A.
- E. Upon completion of all deliverables and work tasks to the satisfaction of SANDAG, Consultant shall submit a final invoice showing the cumulative costs incurred by Consultant, not to exceed maximum amount of the Agreement, and the Final Utilization Report (Exhibit G) completed with the appropriate information. Final payment of retained amounts shall be made following Consultant's submittal of all required documentation and completion of the Project. Notwithstanding the foregoing, all payments are subject to the conditions set forth elsewhere in this Agreement or which are otherwise required by law. SANDAG may withhold all payments to Consultant if Consultant fails to comply with the requirements of the Agreement. Payments shall be subject to review for compliance by SANDAG with the requirements of this Agreement, and payment may be withheld if Consultant is not in compliance with the Agreement. Payments shall be subject to an audit upon completion of all services. No other compensation will be paid except for work done under an amended agreement approved pursuant to Article X, "Changes in Work."

IV. TIME OF PERFORMANCE AND NOTICE REGARDING LATE DELIVERY

Time is of the essence in this Agreement and each covenant and term is a condition herein. Consultant shall perform all services in a prompt and timely manner in accordance with the Activity Schedule shown in Exhibit C. In the event Consultant encounters difficulty in meeting the Activity Schedule or anticipates difficulty in complying with the Activity Schedule, the Consultant shall immediately notify the SANDAG Project Manager and shall provide pertinent details, including, the reason(s) for the delay in performance and the date by which Consultant expects to complete performance or make delivery. This notification shall be informational in character only and receipt of it shall not be construed as a waiver by SANDAG of a contract delivery schedule or date, or any rights or remedies provided by law under this Agreement. Any additional time for performance or delivery must be approved in writing in a document signed by both parties.

V. STANDARD OF CARE

- A. Consultant's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. All services shall be performed to SANDAG's satisfaction.
- B. Consultant acknowledges and understands that the data and/or information it collects and/or provides to SANDAG will be relied upon by SANDAG and other persons or entities that are now or will in the future be under contract with SANDAG. Should information provided by Consultant be inaccurate and cause SANDAG to incur damages or additional expenses, SANDAG shall notify Consultant and Consultant shall immediately place its insurance carrier on notice of a potential claim.

VI. ASSIGNMENT AND SUBCONTRACTING

- A. Consultant shall not assign, sublet or transfer (whether by assignment or novation) this Agreement or any rights under or interest in this Agreement without the written consent of SANDAG, which may be withheld for any reason, provided however, that claims for money due to Consultant from SANDAG under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of such assignment or transfer shall be promptly furnished to SANDAG in writing.
- B. Nothing contained herein shall prevent Consultant from employing independent professional associates, subconsultants and consultants as Consultant may deem appropriate to assist in the performance of services hereunder. The Consultant shall not enter into any agreement to perform subcontracted work in connection with this Agreement without first obtaining SANDAG's written approval as to the scope of work and the subconsultant.
- C. If Consultant subcontracts any of the work to be performed under this Agreement, Consultant shall be as fully responsible to SANDAG for the acts and omissions of Consultant's subconsultant and of the persons employed by the subconsultant as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in this Agreement shall create any contractual relationship between any subconsultant of Consultant and SANDAG. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all of the provisions stipulated in this Agreement to be applicable to the subconsultant. Consultant shall bind every subconsultant and every subconsultant of a subconsultant to the terms of this Agreement, unless specifically noted to the contrary in the subcontract in question, approved in writing by SANDAG.

VII. STATUS OF THE CONSULTANT

- A. Consultant shall perform the services provided for within this Agreement as an independent contractor, and not as an employee of SANDAG. Consultant shall be under the control of SANDAG as to the result to be accomplished and not the means, and shall consult with SANDAG as provided for in the Scope of Work. The payment made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Consultant. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Consultant. Consultant agrees to

indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Consultant or any employee of Consultant for work done under this Agreement.

- B. Except as SANDAG may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise. Contractor shall have no authority, express or implied, to bind SANDAG or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

VIII. INTEGRATION

This Agreement represents the entire understanding of SANDAG and Consultant as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by SANDAG and Consultant.

IX. DELIVERABLES

- A. The term "deliverables" includes, but is not limited to, all original drawings, reports and other documents, including detailed calculations, digital/electronic databases, source code, data sets, analyses, maps, and other work products developed for the Project. Digital or electronic data is required as a deliverable under this Agreement. Consultant must submit deliverables in a format identified by SANDAG as one it can decipher. Documentation and metadata must accompany the data in order for the deliverable to be accepted by SANDAG.
- B. All deliverables including, but not limited to, reports, documents, supporting materials source code, digital or electronic files and databases, and any other deliverables required by the Agreement are the property of SANDAG, whether the work for which they are made be completed or not. In the event this Agreement is terminated, all deliverables shall be delivered within ten (10) days from the date of termination to SANDAG.
- C. Consultant shall have the right to make a copy of the deliverables solely for the purpose of recordkeeping. Consultant may not sell, reuse, or distribute deliverables prepared under this Agreement in any form without SANDAG's express written permission.

X. CHANGES IN WORK

If changes in the work seem merited by Consultant or SANDAG, and informal consultations with the other party indicate that a change is warranted, it shall be processed by SANDAG in the following manner: A letter outlining the changes shall be forwarded to SANDAG by Consultant, with a statement of estimated changes in fee or time schedule. If SANDAG determines the change is merited, is due to an unexpected circumstance, and was caused through no fault of the Consultant, an amendment to the Agreement may be prepared by SANDAG. SANDAG will not be required to pay for the changes in work unless the amendment is executed by both parties before performance of such services commences. Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, any additional work which would increase the cost of this Agreement without SANDAG Executive Director approval. Such amended agreement shall not render ineffective or invalidate unaffected portions of this Agreement.

XI. PROGRESS REPORTING

It shall be the responsibility of Consultant to advise SANDAG on a monthly basis of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the Activity Schedule and Project budget limits. Consultant shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG, and if applicable, to the satisfaction of any government agency as directed by SANDAG. This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives.

XII. INSURANCE

A. Consultant shall procure and maintain during the period of performance of this Agreement, and for 12 months following completion, policies of insurance from insurance companies authorized to do business in the State of California. The policy and certificate(s) of insurance must provide for the following:

1. *Commercial General Liability*: Combined single limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal and bodily injury, including death, and broad form property damage. The certificate of insurance or a policy endorsement must include an acceptable "Waiver of Subrogation" in favor of SANDAG. The certificate of insurance must name SANDAG as an additional insured.
2. *Automobile liability*: for personal and bodily injury, including death, and property damage in an amount not less than \$1,000,000.
3. *Professional liability*: (errors and omissions) for negligent acts, errors or omissions of a professional nature in the amount of \$1,000,000 per claim and aggregate. The policy must be a "claims made" policy.
4. *Workers' compensation and employer's liability*: comply with the laws of the State of California. The certificate of insurance or a policy endorsement must provide an acceptable "Waiver of Subrogation" in favor of SANDAG. The policy must provide for a minimum of \$1,000,000 in employer's liability coverage.

B. Consultant shall furnish satisfactory proof by one or more certificates (original copies) that it has the foregoing insurance. The certificate(s) shall be attached to this Agreement as Exhibit D. The insurance shall be provided by an acceptable insurance provider, as determined by SANDAG, which satisfies the following minimum requirements:

1. An insurance carrier qualified to do business in California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better, and a financial size of "\$10 million to \$24 million (Class V) or better," except for State Fund, or
2. A Lloyd's of London program provided by syndicates of Lloyd's of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for service of process in California.

- C. Certificates of insurance shall be filed with SANDAG. Consultant is responsible for ensuring that its carrier(s) send SANDAG updated certificates of insurance throughout the term of the Agreement. The general liability and property damage insurance, as well as automobile liability insurance, shall include SANDAG as an additional insureds. Consultant's policies shall be primary insurance as to SANDAG so that any other coverage held by SANDAG shall not contribute to any loss under Consultant's insurance. Said certificates of insurance must contain a provision which states: "Such insurance as is afforded by these policies shall be Primary and Non-contributory to the full limits stated in the declarations, and if SANDAG, its Board of Directors, officers, employees or agents have other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only." Each certificate of insurance shall state that the policies may not be canceled without first giving thirty (30) days advance written notice to SANDAG. For purposes of this notice requirement, any material change in the policy prior to its expiration may be considered a cancellation.

XIII. INDEMNITY - HOLD HARMLESS

- A. The Consultant expressly warrants that the work to be performed pursuant to this Agreement shall be performed in accordance with the standards specified in Article V, Standard of Care. Where approval by SANDAG, the Executive Director or other representative of SANDAG is indicated, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subconsultants.
- B. With regard to the Consultant's performance in connection with or incidental to the Project, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below, the Consultant agrees to defend, indemnify, protect and hold SANDAG and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Consultant's or its subconsultants' employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless or willful acts or omissions of the Consultant and its subconsultants and their agents, officers or employees, in performing the work or services herein, and all expenses of investigating and defending against same, including attorney fees and costs; provided, however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its agents, officers or employees.
- C. With regard to the Consultant's performance of professional services, the Consultant agrees to defend, indemnify and hold harmless SANDAG, its officers, agents and employees from and against any and all claims, costs, suits and damages, including attorney's fees, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its subconsultants associated with the Project.

XIV. AUDIT AND INSPECTION OF RECORDS

The Consultant shall maintain complete and accurate records with respect to actual time and allowable costs incurred under this Agreement. All such records shall be maintained on a generally-accepted accounting basis and shall be clearly identified. The Consultant shall provide reasonable access to the

representatives of SANDAG, or its designees, including representatives of the applicable government agencies if this Agreement is funded in whole or in part with state or federal funds, to such books and records and any other books, documents, papers or records of the Consultant that are related to this Agreement. SANDAG, the State, the State Auditor, FHWA, FTA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations shall have the right to examine and audit such books and records and to make transcripts or copies from them as necessary. Consultant shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five (5) years from the date of final payment under this Agreement. This Article must be included in any subcontract entered into as a result of this Agreement.

XV. LAWS, VENUE AND DISPUTE RESOLUTION

- A. This Agreement shall be interpreted in accordance with the laws of the State of California.
- B. In the event Consultant has a dispute with SANDAG during the performance of this Agreement, Consultant shall continue to perform unless SANDAG informs Consultant in writing to cease performance. Consultant shall submit a statement of the grounds for the dispute including all pertinent dates, names of persons involved, and supporting documentation to SANDAG's Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Consultant within 20 days. Upon receipt of an adverse decision by SANDAG, Consultant may submit a request for reconsideration to SANDAG's Executive Director. The request for reconsideration must be received within ten days from the postmark date of SANDAG's reply. The Executive Director will respond to the request for reconsideration within ten working days. The decision of the Executive Director will be final and in writing.
- C. If Consultant is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Consultant shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within ten business days. If SANDAG agrees mediation is appropriate, a mutually acceptable mediator shall be selected by the parties and the parties will proceed to mediation of the dispute.
- D. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the court.

XVI. TERMINATION OR ABANDONMENT

- A. Upon receipt of notice of termination, Consultant shall immediately cease all services unless the notice indicates otherwise, and notify SANDAG's Project Manager of the status of Consultant's performance.
 - 1. *Termination for Cause:* Except as otherwise provided herein, if the Consultant fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant violates any of the covenants, conditions, or terms of this Agreement, SANDAG shall have the right to terminate this Agreement by giving at least five (5) days written notice to the Consultant of such termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, deliverables and reports prepared by the Consultant for this Project, whether completed or in process, shall be delivered by

Consultant to SANDAG within 10 days and shall be SANDAG property. The Consultant shall not be relieved of liability to SANDAG for damages sustained by SANDAG by virtue of any breach of the Agreement by the Consultant, nor shall SANDAG be liable for any costs other than the fees or portions thereof specified herein.

2. *Termination for Convenience:* SANDAG may at any time terminate this Agreement for any reason by giving fifteen (15) days written notice of termination. Upon termination, the Consultant will be paid the reasonable value for services actually performed, based upon proration of the payment schedule set forth in this Agreement. All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, deliverables and reports prepared by the Consultant for this Project, whether completed or in process, shall be delivered by Consultant to SANDAG within 10 days of notice of termination and shall be SANDAG property. SANDAG shall have no other liability to Consultant or its subconsultant(s) in the event of termination for convenience. Under no circumstances shall Consultant be paid an amount in excess of the maximum amount of the Agreement or for profit on unperformed portions of service. In the event of a dispute as to the reasonable value of the services rendered by Consultant, the decision of SANDAG's Executive Director shall be final.
3. *Termination Settlement Expenses:* Termination settlement expenses shall be reimbursed in accordance with 48 CFR, Federal Regulations System, Chapter 1, Part 31. Notwithstanding the foregoing, subpart 31.205-42(c), concerning initial costs, shall not apply to architectural and engineering contract terminations.

XVII. CONFORMITY TO LEGAL REQUIREMENTS

- A. Consultant shall comply with all Federal, State and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775 when applicable. Consultant shall cause all completed deliverables to conform to all applicable requirements of law: federal, state and local.
- B. Consultant shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subconsultants that are included in this Agreement.

XVIII. CONFIDENTIALITY

Consultant shall not use for personal gain or make other improper use of privileged information that is acquired in connection with this Agreement. For purposes of this Agreement "privileged information" includes, but is not limited to, trade secret information, medical records, personnel records, home addresses, and phone numbers of any person, social security numbers, and knowledge of selections of contractors or subcontractors in advance of an official announcement by SANDAG.

XIX. INTELLECTUAL PROPERTY RIGHTS

Consultant agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work product required by this Agreement shall

be vested in SANDAG and hereby agrees to relinquish all claims to such property rights in favor of SANDAG.

XX. PROHIBITED INTEREST/COVENANTS AGAINST CONTINGENT FEES

- A. No elected official(s) of SANDAG or any of its member agencies, the State of California or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of SANDAG shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.
- B. Consultant warrants that its firm has not employed, retained, paid, or agreed to pay any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, SANDAG shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- C. Certifications on Lobbying are required for this contract. Consultant assures that no federal funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of this Agreement. Exhibit E to this Agreement, entitled "Certifications On Lobbying," which was submitted by Consultant at the time its proposal was submitted, is hereby incorporated by reference.
- D. Consultant agrees to comply with the provisions of 31 U.S.C. Section 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and require Consultant to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. Consultant agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

XXI. CONFLICT OF INTEREST

- A. Consultant shall file a Conflict of Interest Statement with SANDAG's Executive Director if it is required by SANDAG's Conflict of Interest Code. Consultant is responsible for determining it is a "Consultant" for purposes of the Political Reform Act and such code, and for compliance with any applicable financial disclosure requirements. Consultant represents that to its knowledge, entry into this Agreement will not result in a conflict of interest prohibited by California Government Code section 1090 for SANDAG's employees or Board of Directors.
- B. Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's

knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity which might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic interest or other prohibited conflict of interest of Consultant's during the term of this Agreement.

XXII. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. In connection with the performance of this Agreement, the Consultant will cooperate with SANDAG in meeting its commitments and goals with regard to equal opportunities for disadvantaged business enterprises (DBEs), including minority- and women-owned business enterprises. It is SANDAG's policy that DBEs shall have an equal opportunity to participate in the performance of contracts.
- B. SANDAG has not established goals for the participation of DBE for this Agreement. The Consultant, however, is responsible for being fully informed of the requirements of Part 26, Title 49 of the Code of Federal Regulations and SANDAG's DBE Program, which are incorporated herein by reference. Consultant is urged to obtain DBE participation should a clearly defined portion of the work become available.
- C. It is SANDAG's policy that certified DBE firms shall have an equal opportunity to participate in performance of contracts financed in whole or in part with federal funds. The Project covered by this Agreement will be financed in whole or in part with federal funds. Therefore, the Consultant shall ensure that certified DBE firms, as defined in 49 CFR Part 26, have an equal opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in 49 CFR Part 26, for such assurance. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure to carry out these requirements shall constitute a material breach of this Agreement, which may result in termination of this Agreement or such other remedy as SANDAG deems appropriate.
- D. The Consultant shall pay all DBE subconsultants and nonDBE subconsultants for satisfactory performance of their contracts within thirty (30) days from receipt of each subconsultant invoice. Consultant must pay all DBE and nonDBE subconsultants prior to requesting payment from SANDAG for those expenses. Consultant agrees further to release retainage payments to each subconsultant within 10 (ten) days after Consultant receives payment of the retainage from SANDAG. Any delay or postponement of payment from this time frame may occur only for good cause following written approval from SANDAG. This paragraph applies to both DBE and non-DBE subconsultants.

XXIII. SUCCESSORS OR ASSIGNS

Subject to the provisions of Article XIII, "Indemnity - Hold Harmless," all terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

XXIV. NONDISCRIMINATION

- A. Consultants doing business with SANDAG must be equal opportunity employers who achieve or attempt to achieve parity in the representation of women and minorities in their work force.
- B. The Consultant shall ensure equal employment opportunity for all persons. Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age, medical condition, physical or mental disability, Vietnam-era veteran or special disabled veteran status, marital status or citizenship, within the limits imposed by law. These principles are to be applied by the Consultant in all employment practices, including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations.
- C. During the performance of this Agreement, Consultant agrees to comply with all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (Executive Order 11246), the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and any other applicable federal and state laws and regulations subsequently enacted.

XXV. INCORPORATION OF FEDERAL/STATE GUIDELINES

- A. All relevant federal and state grant provisions and guidelines, as presently written or as changed during the life of this Agreement, bearing on this Agreement, are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- B. Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 CFR Part 18, and Federal Transit Administration (FTA) Circular 4220.1E, "Third Party Contracting Requirements" and OMB Circular A-102 "Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments."

XXVI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- A. Debarment and Suspension certification is required for all procurements exceeding \$25,000. The Federal Transit Administration (FTA) shall be informed of any certification exceptions. Exhibit F to this Agreement, entitled "Certifications Regarding Debarment, Suspension, and Other Matters," which was submitted by Consultant at the time its proposal was submitted, is hereby incorporated by reference.
- B. Consultant certifies, to the best of its knowledge and belief, that Consultant and its principals:
 - 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - 2. Have not within a three-year period preceding this proposal or Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense

in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph B above; and
 4. Have not within a three-year period preceding this proposal or Agreement had one or more public transactions terminated for cause or default.
- C. Should Consultant be unable to certify to any of the statements above, Consultant shall attach an explanation to this Agreement.

XXVII.COST PRINCIPLES

Consultant agrees that Contract Cost Principles and Procedures, Federal Acquisition Regulations in Title 48, Part 31 et seq., of the Code of Federal Regulations, govern allowable elements of cost under this Agreement. Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments. Any costs for which payment has been made to Consultant that are later determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Consultant to SANDAG. Any subcontract, entered into as a result of this contract, shall contain all the provisions of this Article.

XXVIII.EQUIPMENT PURCHASES

- A. Prior authorization in writing by the Project Manager shall be required before the Consultant enters into any non-budgeted purchase order or subcontract exceeding \$500 for supplies, equipment, or consultant services. If the non-budgeted purpose will cause the Project budget to exceed the Maximum Amount of the Agreement, then prior approval from SANDAG's Executive Director is also required. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$500, with prior authorization by the Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- B. The Consultant shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG on request by SANDAG.

- C. At the conclusion of the Agreement or if the Agreement is terminated, the Consultant may either keep the equipment and credit SANDAG in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established procedures, and credit SANDAG in an amount equal to the sales price. If the Consultant elects to keep the equipment, fair market value shall be determined, at the Consultant's expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to SANDAG and Consultant. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG.
- D. CFR 49, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the project.
- E. Any subcontract entered into as a result of this Agreement, shall contain all the provisions of this Article.

XXIX. PRE-AWARD AUDITS

Consultant was not required to undergo a pre-award audit, however, circumstances may change that will result in the need for an audit at some later stage. Accordingly, Consultant acknowledges that he/she/it may be required to undergo an audit by the Federal Highway Administration, or Caltrans acting on its behalf, or by a Certified Public Accountant selected by SANDAG, and Consultant hereby agrees to fully cooperate if such an audit is requested.

XXX. ORDER OF PRECEDENCE

SANDAG's Request for Proposals (RFP) and Consultant's proposal concerning the Project are hereby incorporated by reference except to the extent they may conflict with the terms of the Agreement. In the event of conflicting provisions, the following order of precedence will apply: 1) the Agreement; 2) the RFP; 3) Consultant's proposal.

XXXI. ADMINISTRATION

Consultant proposes to assign Christopher Webb as its Project Manager to provide supervision and have overall responsibility for this Agreement for Consultant. The Project Manager shall not be removed from the project or reassigned without prior approval of SANDAG. Consultant must obtain approval from SANDAG in writing before assigning a new project manager to the Project. No subcontracting of these professional services shall be made without prior approval of SANDAG.

XXXII. HEADINGS

Article headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

XXXIII. NOTICE

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

Contractor Name: Moffatt & Nichol Project Name: Sand Compatibility and Opportunistic Program

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attn: Rod Rundle, Project Manager

Consultant:
Moffatt & Nichols
320 Golden Shore, #300
Long Beach, California 90802
Attn: Christopher Webb, Project Manager
and shall be effective upon receipt thereof.

XXXIV. PRESERVATION OF AGREEMENT

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

XXXV. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date written above.

SAN DIEGO ASSOCIATION
OF GOVERNMENTS

MOFFATT & NICHOL

GARY L. GALLEGOS
Executive Director

Michael J. McCarthy, PE
Vice President

APPROVED AS TO SUFFICIENCY
OF FORM AND LEGALITY:

Consultant Federal Tax Number:
95-1951343

Office of General Counsel

Exhibit A

SCOPE OF WORK

The project team understands the importance of developing the SCoup program as an integral part of the California Coastal Sediment Management Master Plan. The criteria, protocols, and templates created for this project will set the ground work for the permitting of the program. The level of detail provided during the development of the protocols and templates will ensure the validity of CEQA/NEPA document prepared for this program. The method to be followed is outlined below for each task. The project team will prepare a master document that lays out protocols, templates, and operations plans in a way that is understandable by lay staff. It can be a step-by-step set of instructions and decision points similar to a cookbook to implement projects. A proto-type exists for BEACON that can be used by SANDAG. Three meetings with SANDAG and DBAW staff are assumed total, combined with two separate presentations to the Shoreline Preservation Committee, or SPC (with one serving as the hearing for the CEQA document). The meetings with SANDAG and DBAW staff will be scheduled on the same days as the SPC to maximize efficiency.

TECHNICAL APPROACH

Task 1 – Development of Sediment Characterization and Comparison Protocols

1. Physical Characterization - The project team will develop guidelines for the physical characterization of sediment at potential source sites and receiver beaches. The protocols will address sampling methods, locations, frequency, and seasonal timing. Sampling will be specified in three-dimensions, and will be standardized across jurisdictions.
2. Sampling requirements will be specified consistently between source and receiver sites to enable an “apples-to-apples” comparison, and will be developed with input solicited from the USEPA, USACE, California Coastal Commission, and the State Water Quality Control Boards
3. The team will specify how to characterize receiver locations ranging from offshore, nearshore, and beach at multiple sample depths. Input from agencies will be critical to gaining consensus on the approach that can be applied statewide.
4. The appropriateness of developing a composite grain size characterization will be considered for receiver sites. Blending of sediments will not be considered as an acceptable method for obtaining suitable opportunistic beach fill sediments. Through the permitting process of other Opportunistic Beach Fill programs, M&N has discussed this issue with the resource agencies and it is not considered an acceptable practice for opportunistic source material.
5. Chemical Testing - The project team will develop guidelines for chemical testing of potential opportunistic source material. The checklists developed for Carlsbad, San Clemente and BEACON will be reviewed and refined to include a more regional approach to chemical testing. This checklist proposes a tiered approach as defined by the USEPA Inland Testing Manual criteria as well as other sources. Other local agencies are now proposing to perform a minimum of bulk chemistry testing of all sources as part of their opportunistic beach fill programs.
6. Biological Testing - The project team will investigate and develop guidelines for the biological characterization of potential source material and when biological testing may be appropriate. The appropriate methods for conducting vegetative surveys are dependent upon the species of interest,

habitat location, and project goals. Invasive species such as *Caulerpa* are of particular concern because where these species have become well established they can cause significant ecological and economic impacts. Native vegetated areas are generally considered to be sensitive habitats because these vegetated areas are typically highly productive, limited spatial extent, they diversify habitat space increasing biodiversity, and often are nursery areas for many fish and invertebrate species.

7. Seasonal influences on sampling receiving beaches will be determined and appropriate sampling protocol determined. The team's extensive understanding of local seasonal changes will help to determine this specific requirement.
8. Blending of source materials is typically not permissible according to resource agencies. The group will consider this option and discuss with the agencies, but it believes it may not be possible.
9. Natural Sediment Input - A summary of the estimated natural sediment input to the Oceanside Littoral Cell will be developed using published information (including work by Gary Griggs at U.C. Santa Cruz) to provide a sense of the impact of a proposed opportunistic nourishment project to the sediment budget as well as define the characteristics of the natural sediment sources.

Deliverable: Sand Compatibility Testing Protocols

Task 2 – Development of Template for Use Of Less-Than-Optimum Sand Sources

M&N has been the consultant for the Opportunistic Beach Fill Programs (OBFP) for Carlsbad, San Clemente, and BEACON (Ventura and Santa Barbara Counties). For each of these programs, criteria have been established for the use of finer-grained sediments for use as opportunistic beach fill material and technical reports have been prepared. The team will utilize these previous studies, and work performed by the Santa Cruz Harbormaster on a similar project, for this task in developing a planning template for consideration of less-than-optimum sediment sources. The approach will be to specify the abbreviated template for use of optimum sands first as a baseline, then develop the template for use of less than optimum sands second. Specifics for each subtask are outlined below:

1. Permitting issues - The project team will develop a template that will identify a streamlined project approval process. It will identify potential permits and qualifying project parameters that may reduce the number or extent of permits or approvals necessary. Coordination with the DBAW PPR project team will occur to maximize effectiveness. For this task, the team will consider the following potential permits and agency requirements:
 - U.S. Army Corps of Engineers (USACE), Sections 10 and 404 Permit;
 - U.S. Environmental Protection Agency – Advisory to the USACE;
 - Regional Water Quality Control Board, Section 401 Certification;
 - California Coastal Commission, Coastal Development Permit, Local Coastal Programs;
 - California State Lands Commission, Lease of State Lands;
 - State Department of Parks and Recreation, Encroachment Permit;
 - California Department of Fish and Game, Streambed Alteration Agreement;
 - United States Fish and Wildlife Service, Section 7 Consultation; and
 - Local Agency Permits and Approvals (e.g., grading and construction permits).

These requirements will be considered and included where applicable in the template. Where necessary, agency representatives (e.g., USEPA staff and others as appropriate) will be contacted to seek clarification on potential requirements. Thresholds and issues for each of the permits and

agencies will be identified. In this way, the template will be used to provide screening criteria for individual replenishment projects and sites.

2. Checklist elements – The team will develop a comprehensive checklist that can be used as a determination process for potential source material. Similar checklists have been developed by M&N for the other OBFPs outlined above and in the RFP. These will be used to the greatest extent possible for the SANDAG SCoup
3. Small project/Large project checklists - The team will incorporate lessons-learned from the other OBFPs on small-scale projects vs. large-scale projects and apply those into a checklist for potential source materials.
4. Points of concern and possible data needed – The team will identify what tests, data collection, etc., will be needed to determine if potential source material is suitable under the parameters established in this study.
5. Level of monitoring dependent on marine resources – Recommendations for assessing the cross-shore and along-shore dispersal of the nourishment material will be developed using lessons learned while monitoring the 12 receiver beaches nourished as part of the Regional Beach Sand Project. The type and level of monitoring that should be considered during and/or after sand placement will be included based on available information on marine resources in the project vicinity, potential impacts, and consideration of different types of source sands.
6. Sediment movement patterns - Cross-shore and along-shore sediment movement patterns in the Oceanside Littoral Cell will be assessed using profile data collected under the auspices of the SANDAG Regional Beach Monitoring Program. Particular emphasis will be placed on the fate of the Regional Beach Sand Project material placed in Spring 2001.
7. Impacts to visual feeders (birds, fish) - Mitigation strategies will be developed to avoid and/or minimize impacts from burial, turbidity, and sedimentation from placement of an opportunistic project.
8. Current usage of dredged material for beach fill - The team will investigate dredging projects in the San Diego County area and to what extent these projects have resulted in a beach fill project.

Deliverable: Templates for Use of Optimum and Less-than-Optimum Sands

Task 3 – Identification of Opportunistic Sand Sources, Receiver Sites, and Placement Options

1. Identification of potential sand sources – The project team will review the other OBFPs and potential sand sources available identified for those programs. These will be evaluated for applicability in the San Diego region and other potential sand sources will be identified. A similar task was completed for the San Diego RBSP under SANDAG.
2. Identify and analyze potential receiving beaches - M&N developed a receiver site evaluation matrix for the BEACON (Ventura and Santa Barbara Counties) OBFP as presented below. A similar matrix will be created for the SANDAG SCoup that will identify criteria applicable to the San Diego region with the focus on the Oceanside Littoral Cell (and able to be tailored for use at other regions as well), including the biological and environmental elements. The optimum receiver sites will be identified. The constraints analysis will be based on the checklists developed under Task 2, including considerations of proximity of beaches to known sensitive resources, potential impacts, use of less-than-optimum sands, and sand placement options. Work performed by Melanie Coyne for the Coastal Commission will be reviewed and applied if appropriate, as well as SANDAG's data

base of nearshore habitat. A priority ranking tool for beach nourishment will be provided. In addition, mitigation strategies identified in Task 2, as well as seasonal restrictions, that have the potential to reduce impacts to below a level of significance will be considered.

Types of available information on marine resources that will be considered include, but may not be limited to, the SANDAG Nearshore GIS Data Base, the San Diego Regional Beach Sand Project EIR/EA, Regional Sand Retention Strategy Project constraints map, draft Encinitas and Solana Beach Shoreline Protection EIS/EIR, the DBAW website, U.S. Navy habitat resource maps, recent kelp maps, recent locations of endangered species occurrence, and other readily available habitat maps.

BEACON EVALUATION MATRIX POTENTIAL PLACEMENT SITES																		
County	Placement Site ^(1,2)	Need		Construction Access ^(2,3)		Proximity to Sources (Flood Control Basins, Landslide Areas) ^(3,4)		Environmental Sensitivity ^(5,6)		Stockpile Location ^(2,3)		Beach Use ⁽⁷⁾		Proximity to Existing Creek Mouth ⁽³⁾		Total Score	Rank	Existing Profile ⁽⁸⁾
		4		3		3		3		2		2		1				
Santa Barbara County	Ellwood Beach	2	8	2	6	3	9	2	6	1	2	2	4	1	1	36	9	Yes
	Goleta Beach	3	12	2	6	3	9	1	3	3	6	3	6	3	3	45	2	No
	East Beach	2	8	2	6	2	6	2	6	3	6	3	6	1	1	39	7	Yes
	Summerland	2	8	3	9	3	9	2	6	1	2	2	4	2	2	40	6	Yes
	Santa Claus Lane	2	8	3	9	3	9	2	6	3	6	2	4	2	2	44	3	Yes
	Ash Avenue	3	12	2	6	3	9	1	3	1	2	3	6	3	3	41	5	Yes
	Rincon	2	8	2	6	2	6	2	6	1	2	2	4	3	3	35	10	No
Ventura County	Oil Piers	3	12	3	9	2	6	2	6	3	6	2	4	1	1	44	3	No
	Solimar Beach	2	8	3	9	3	9	2	6	1	2	2	4	1	1	39	7	Yes
	Emma Wood	2	8	3	9	3	9	1	3	3	6	2	4	2	2	41	5	Yes
	Surfer's Point	3	12	2	6	3	9	2	6	3	6	3	6	3	3	48	1	Yes
	Pierpont Beach	3	12	2	6	3	9	2	6	1	2	3	6	2	2	43	4	Yes
	Santa Clara River	2	8	2	6	2	6	1	3	3	6	3	6	3	3	38	8	Yes
	Oxnard Shores	3	12	2	6	2	6	2	6	1	2	3	6	2	2	40	6	Yes
	Hueneme Beach	3	12	3	9	2	6	2	6	3	6	2	4	1	1	44	3	Yes
		High = 3 Medium = 2 Low = 1	Truck and Rail = 3 Truck Only = 2 No Access = 1		0-5 Miles = 3 5-10 Miles = 2 10-15 Miles = 1		Low = 3 Medium = 2 High = 1		Yes = 3 No = 1		High = 3 Medium = 2 Low = 1		<1 Mile = 3 1-3 Miles = 2 3-5 Miles = 1					

3. Placement techniques and options – M&N also developed placement techniques for the other OBFPs. These techniques, along with our knowledge of beach nourishment construction practices, will be reviewed and techniques that are applicable to this program will be outlined.
4. Costs and Funding Sources – Expected costs associated with disposing opportunistic material to the beach will be investigated by M&N and funding sources that may be available to offset these costs will be investigated by the team. The team will review work completed by Dr. Philip King on economics of use of sand for beach nourishment to maximize understanding of cost implications. It will also consult with DBAW's PPR team to identify potential additional funding sources.
5. Tests and placement options for source-receiver combinations - M&N will analyze each optimum receiver site against the protocols and guidelines developed in Tasks 1 and 2 to develop the tests necessary and placement options that are possible for each source-receiver combination.
6. Recommendations for sediment testing to source only - M&N has been procuring permits for the other OBFPs and has worked with the resource agencies closely in regard to the possibility of source material testing only. Typically, resource agencies require testing of both source and receiver site

sediments to ensure compatibility. The team will apply lessons-learned with the other OBFPs in developing recommendations on when it is and is not applicable to test the receiving beach for compatibility.

7. Stockpile area feasibility – Potential stockpile areas will be investigated for temporary storage of fill material. M&N has identified stockpile areas for the other OBFPs and will incorporate our analysis procedures to the SANDAG SCoup for identifying such areas locally.
8. Develop Draft Generic Plan for Statewide application – All of the analysis and findings outlined in the above tasks will be combined into a draft plan for implementing an opportunistic sand program in other California regions and statewide. The view of this plan is one that is technically sound, but presented in a simple way that can be understood by the less technically-oriented agency staff (generalists). It can be similar to the operations plan prepared for BEACON. This draft plan will be presented for review to the DBAW Project Manager, SANDAG, the Advisory Committee, and the SANDAG Shoreline Preservation Committee. Comments received from the presentation will be incorporated into a final plan.

Deliverables:

- List of Sediment Sources, Receiver Beaches, and Temporary stockpile areas.
- Placement Techniques for Receiver Sites
- Draft and Final Master Plan Documents for a Generic Opportunistic Sand Program

Task 4 – Develop a Project Description

The project team will develop the project description for CEQA/NEPA analyses. The project will be designed to obtain surplus sand from all potential construction, development and maintenance (e.g., harbor dredging, wetlands restoration, highways) projects in the region and place it on designated receiver beach site as nourishment. The project description will provide all the project components necessary for a CEQA/NEPA analysis such as the location and size of the receiver beach, amount of sand to be imported, characteristics of imported sand, location and size of proposed stockpiles, method of stockpiling, equipment to be used, transportation management features (e.g., flagmen and signage), transportation routes, construction timing, project duration, and required agency permits and approvals.

Deliverables:

- Proposed Project Description for the Oceanside Opportunistic Sand Program.

Task 5 – Preparation of a CEQA/NEPA Document

The team will prepare the CEQA and NEPA documentation for the project. This scope of work assumes that the environmental document will be a joint Mitigated Negative Declaration (MND)/Environmental Assessment (EA). The team will complete an Initial Study of Environmental Significance, information currently available from SANDAG, other published documents, our understanding of the project area, and interviews with local staff and service providers. Specific format requirements dictated by SANDAG will be followed; if no formatting preferences are provided, the team will follow the general format provided by the CEQA Guidelines.

Potential issue areas associated with the proposed project include the following:

- Biological Resources
- Hydrology and Water Quality
- Geology and Soils
- Land Use and Planning

- Traffic and Circulation
- Noise
- Air Quality
- Recreation

Quality Assurance/Quality Control - M&N team has an established formal quality assurance/quality control (QA/QC) framework that will be followed to promote the highest quality work possible. The primary goal of the proposed project is to create protocol for opportunistic beach fill operations that can be implemented throughout the San Diego region and applied statewide. M&N operates under the requirements of a Quality Control Manual that sets the requirements for internal QA/QC. The plan requires a QA/QC plan to be prepared at the outset of the project identifying the staff responsible to perform the review, the documentation to review, and the review dates. It requires a portion of the project budget to be allocated to the review, and allows for an internal review audit to occur on any project at any time. The QA/QC process for this project will involve the following elements:

- Independent overview of conclusions made previously by others;
- Verification of data at source or duplication of data, whenever possible;
- Comparison of data or report conclusions with other similar projects or situations, in particular the reference systems for each project alternative;
- In-house checking of all design input data, with particular reference to units and calibration parameters;
- Peer review of concepts, technical work elements and work products by specialists with experience in similar projects or conditions; and
- Senior executive review of all primary conclusions and recommendations.

All project managers must adhere to this requirement for every project. This process has formally been in place at M&N for nearly 10 years and works well to identify potential errors or faulty assumptions and methods. Our designs have been successfully constructed and our work has withstood the highest level of scrutiny by “blue ribbon” panels due to this QA/QC procedure.

Exhibit B

PAYMENT SCHEDULE

Overall, SCOUP general project operating costs (including subcontractor services) are as follows:

SUMMARY COSTS									
	LABOR COSTS					OTHER DIRECT COSTS		MARKUP	TASK TOTAL
	M&N	MEC	EDAW	Coastal Frontiers	SAIC	M&N	Subs		
								(5%)	
Task 1 - Protocols for Sand Source/Receiver Compatibility	\$2,118	\$3,814	\$0	\$7,062	\$0	\$0	\$0	\$544	\$13,538
Task 2 - Template for <80% Sand-Size Usage	\$3,871	\$4,112	\$4,480	\$1,284	\$3,429	\$0	\$151	\$673	\$18,000
Task 3 - Sand Sources Survey	\$9,404	\$3,006	\$0	\$4,190	\$7,493	\$0	\$7	\$735	\$24,835
Task 4 - Project Description	\$3,768	\$0	\$3,780	\$0	\$0	\$0	\$60	\$192	\$7,800
Task 5 - CEQA / NEPA Documents	\$4,356	\$0	\$19,160	\$0	\$0	\$0	\$400	\$978	\$24,894
Meetings	\$3,960	\$0	\$0	\$1,568	\$0	\$88	\$225	\$94	\$5,935
TOTALS	\$27,476	\$10,932	\$27,420	\$14,104	\$10,922	\$88	\$843	\$3,215	
GRAND TOTAL									\$95,000

Specific costs associated with project-related services by Moffatt & Nichol and for each individual subcontractor utilized for the SCOUP project are presented below:

A. Moffatt & Nichol Prime Contractor Project Costs:

MOFFATT & NICHOL										
Staff	LABOR HOURS							LABOR COSTS SUBTOTAL	OTHER DIRECT COSTS	TASK COST
	Michael McCarthy	Chris Webb	Russell Boudreau	Craig Frampton	Anne-Lise Lindquist	CADD	Clerical			
	Principal	Senior Scientist	Supv Eng	Eng I	Staff Engr	CADD I	Clerical			
Hourly Rate	\$195	\$165	\$178	\$115	\$94	\$82	\$68			
Task 1 - Protocols for Sand Source/Receiver Compatibility		6			12			\$2,118		\$2,118
Task 2 - Template for <80% Sand-Size Usage	1	6	2	8	15			\$3,871		\$3,871
Task 3 - Sand Sources Survey	2	14	4	8	40	16		\$9,404		\$9,404
Task 4 - Project Description	0.5	6	2		16	10		\$3,768		\$3,768
Task 5 - CEQA / NEPA Documents	0.5	6	2		24	8		\$4,356		\$4,356
Meetings		24						\$3,960	\$88	\$4,048
TOTAL HOURS	4	62	10	16	107	34	0			
TOTAL LABOR COSTS	\$780	\$10,230	\$1,780	\$1,840	\$10,058	\$2,788	\$0	\$27,476		
TOTAL OTHER DIRECT COSTS									\$88	
M & N TOTAL										\$27,564

B. MEC Analytical Subcontractor Project Costs:

MEC ANALYTICAL						
	Staff	LABOR HOURS			LABOR COSTS SUBTOTAL	OTHER DIRECT COSTS
		D Diener	D Moore	Environmental Scientist II		
Level		Principal	Senior Scientist	Scientist II		
Hourly Rate		\$135	\$117	\$85		
Task 1 - Protocols for Sand Source/Receiver Compatibility		4	12	22	\$3,814	
Task 2 - Template for <80% Sand-Size Usage		4	16	20	\$4,112	
Task 3 - Sand Sources Survey		4	8	18	\$3,006	
Task 4 - Project Description					\$0	
Task 5 - CEQA / NEPA Documents					\$0	
TOTAL HOURS		12	36	60		
TOTAL LABOR COSTS		\$1,620	\$4,212	\$5,100	\$0	
TOTAL OTHER DIRECT COSTS						\$0
MEC TOTAL						\$10,932

C. EDAW Subcontractor Project Costs:

EDAW						
	Staff	LABOR HOURS				LABOR COSTS SUBTOTAL
		Larkin	Biddulph/Fenner			
Level		Principal	Sr. Associate	GIS	Admin/WP	
Hourly Rate		\$150	\$130	\$90	\$60	
Task 1 - Protocols for Sand Source/Receiver Compatibility		0	0	0	0	\$0
Task 2 - Template for <80% Sand-Size Usage		4	28	0	4	\$4,480
Task 3 - Sand Sources Survey		0	0	0	0	\$0
Task 4 - Project Description		4	18	8	2	\$3,780
Task 5 - CEQA / NEPA Documents		6	116	26	14	\$19,160
TOTAL HOURS		14	162	34	20	
TOTAL LABOR COSTS		\$2,100	\$21,060	\$3,060	\$1,200	\$27,420
TOTAL OTHER DIRECT COSTS						\$560
EDAW TOTAL						\$27,980

D. Coastal Frontiers Subcontractor Project Costs:

COASTAL FRONTIERS					
	Staff	LABOR HOURS		LABOR COSTS SUBTOTAL	TASK COST
		C. Leidersdorf	G. Hearon		
Level		Principal Eng	Eng		
Hourly Rate		\$125	\$98		
Task 1 - Protocols for Sand Source/Receiver Compatibility		22	44	\$7,062	\$7,062
Task 2 - Template for <80% Sand-Size Usage		4	8	\$1,284	\$1,284
Task 3 - Sand Sources Survey		10	30	\$4,190	\$4,190
Task 4 - Project Description				\$0	\$0
Task 5 - CEQA / NEPA Documents				\$0	\$0
Meetings (3)			16	\$1,568	\$1,793
TOTAL HOURS		36	98		
TOTAL LABOR COSTS		\$4,500	\$9,604	\$14,104	\$14,329
TOTAL OTHER DIRECT COSTS				\$225	
COASTAL FRONTIERS TOTAL					\$14,329

E. SAIC Subcontractor Project Costs:

SAIC					
	Staff	LABOR HOURS		LABOR COSTS SUBTOTAL	TASK COST
		Karen Green			
Level		Principal Arch			
Hourly Rate		\$127			
Task 1 - Protocols for Sand Source/Receiver Compatibility				\$0	\$0
Task 2 - Template for <80% Sand-Size Usage		27		\$3,429	\$3,480
Task 3 - Sand Sources Survey		59		\$7,493	\$7,500
Task 4 - Project Description				\$0	\$0
Task 5 - CEQA / NEPA Documents				\$0	\$0
TOTAL HOURS		86	0	0	
TOTAL LABOR COSTS		\$10,922	\$0	\$0	
TOTAL OTHER DIRECT COSTS				\$58	
SAIC TOTAL					\$10,980

Exhibit C

ACTIVITY SCHEDULE

MANAGEMENT APPROACH

Budget and Schedule – M&N is dedicated to meeting project budgets and schedule requirements and keep SANDAG progressing toward their goal. Its methods of meeting these conditions are to establish a project work plan whereby all staff and subconsultants have distinct tasks, budgets, and milestones to meet to keep the project on track financially and on schedule. M&N will monitor the project progress weekly and regularly meet personally or by teleconference to communicate, report, and resolve issues. It will chart the project progress through its lifespan with gantt charts and modify them to adapt to changes as they arise. M&N also has an electronic accounting system of daily time reporting for work by staff that enables it to monitor progress instantly. These tools equip M&N to keep the project on track throughout.

SCHEDULE

The project will be completed with a Draft CEQA/NEPA document within six months from Notice-to-Proceed (NTP) as tentatively indicated in the RFP. Finalizing the CEQA/NEPA document also requires time that does not appear to be included in the tentative RFP schedule. Our assessment is that this schedule is reasonable and will be met by this team with the exception of the Final CEQA/NEPA needing to extend beyond the six month finish date in the RFP. Preparing these deliverables can be done quickly and efficiently due to our recent experience preparing them for other local agencies. The timeline below is based on a Notice-to-Proceed issued effective October 1, 2004. The schedule to be followed based on this project start date will be as follows:

- Testing protocols by mid-November;
- Non-optimum sand templates being complete by mid-November;
- Lists of sediment sources, receiver beaches and stockpile sites done by mid-January;
- Appropriate placement techniques done by mid-January;
- The generic opportunistic program plan by mid-January;
- The project description done by mid-January;
- The Draft CEQA/NEPA document distributed for public review by April 15, 2005; and
- The Final CEQA/NEPA document is to be completed within four weeks after public comments are received on the public review draft.

Exhibit D

CERTIFICATES OF INSURANCE

and
ADDITIONAL INSURED ENDORSEMENTS

The certificates must be provided by the Consultant before the contract is signed.

Exhibit E

CERTIFICATIONS ON LOBBYING

Name of Applicant: Moffatt & Nichol

Name of Authorized Representative: Michael J. McCarthy,
PE

Relationship of Authorized Representative: Vice
President

An Applicant that submits, or intends to submit this fiscal year, an application for U.S. DOT assistance exceeding \$100,000 must provide the following certification. U.S. DOT may not provide federal assistance for an application exceeding \$100,000 until the Applicant provides certification of the following by signing the signature page at the end of this document.

In accordance with U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, 49 CFR Part 19, Appendix A, and the Lobbying Disclosure Act of 1995, for each application for federal assistance exceeding \$100,000, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal grant or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government Wide Guidance for New Restrictions on Lobbying" 61 Fed. Reg. 1413 (1/19/96)).
- C. The Applicant shall require that the language of this certification be included in the award documents for each subaward at any tiers (including subcontracts, subgrants, sub-agreements, and contracts under grants and cooperative agreements financed with U.S. DOT assistance) and that each sub-recipient shall certify and disclose accordingly.

The Applicant understands that: (1) This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into; (2) Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352 (as amended by the Lobbying Disclosure Act of 1995); and (3) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

In signing this document, I declare under the penalty of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant, are true and correct. In addition, Applicant understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: _____

Authorized Representative of Applicant

Exhibit F

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Name of Applicant: Moffatt & Nichol

Name of Authorized Representative: Michael J. McCarthy,
PE

Relationship of Authorized Representative: Vice
President

In accordance with the provisions of U.S. Department of Transportation (U.S. DOT) regulations on Government-wide Debarment and Suspension (Non procurement) at 49 CFR 29.510, the Applicant (Participant) agrees as follows:

- A. By signing and submitting this certification, the Participant is providing the certification set out below.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- C. The Participant shall provide immediate written notice to the person to which this certification is submitted if at any time the Participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- D. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact SANDAG for assistance in obtaining a copy of those regulations.
- E. The Participant agrees by submitting its proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by SANDAG.

- F. Participant further agrees by submitting this proposal that it will include this Article in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- J. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions
1. The prospective lower tier participant certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 2. Where Participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

In signing this document, I declare under the penalty of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Participant are true and correct.

Date: _____

Authorized Representative of Applicant

